

Daffin filed its Motion to Dismiss for Failure to State a Claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

II.

ARGUMENT

3. Federal Rule of Civil Procedure 12(b) states, in pertinent part, “A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed.” Federal Rule of Civil Procedure 81(c) states, in pertinent part,

(c) Removed Actions.

(1) Applicability. *These rules apply to a civil action after it is removed from a state court.*

(2) Further Pleading. After removal, repleading is unnecessary unless the court orders it. A defendant who *did not answer before removal* must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 7 days after the notice of removal is filed.

4. Barrett Daffin’s motion to dismiss must be denied. It filed an answer in state court prior to removal. The motion is in violation of FRCP 12(b) and 81(c). *Nationwide Bi-Weekly Administration, Inc. v. Belo Corp.*, **512 F.3d 137 (5th Cir. 2007)**.

PRAYER

WHEREFORE PREMISES CONSIDERED Plaintiff prays the Court deny Barrett Daffin’s 12(b)(6) motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Civil Procedure, a true and correct copy of the foregoing has been sent on this the 31st day of January 2013 to all parties of record via the method indicated as follows:

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